

JPA File No.: 07-063 I  
AG Contract No.: P001 2007 003612  
Project No.: 95 YU 12.0  
Project: Multi-use Pathway Maintenance  
Section: SR 95 @ Bingham Ave.  
**TRACS No.: H6728 01C**  
**Budget Source Item No.: 75308**

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
CITY OF SOMERTON

**THIS AGREEMENT** is entered into this date November 29<sup>th</sup>, 2007, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF SOMERTON, acting by and through its MAYOR and CITY COUNCIL (the "City"). The State and the City are collectively referred to as "Parties".

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. The State and City agree to participate in the design, construction and maintenance of a new multi-use pathway on SR 95 incident to the State's enhancement project. The pathway project will consist of the State constructing a 6' – 10' wide concrete walkway along SR 95 at Bingham Avenue, MP 12.36 – MP 12.51, located at the eastern limits of the City. This effort will include a stabilized decomposed granite shoulder, pedestrian lighting, landscaping including palm trees, benches and identity signage, hereinafter referred to as the "Project." The City will maintain said Project upon completion of construction.
4. The Parties hereto agree to and acknowledge the following conditions **a)** the Parties shall perform their responsibilities consistent with this Agreement; and **b)** any change or modification to the Project will only occur with the mutual written consent of the Parties.

**THEREFORE**, in consideration of the mutual covenants expressed herein, it is agreed as follows:

---

NO. 29447  
Filed with the Secretary of State  
Date Filed: 11/29/07  
  
Secretary of State  
By:

**II. SCOPE OF WORK**

## 1. The State shall:

- a. Upon execution of this Agreement, become the designated agent for the City.
- b. Prepare design plans, specifications and other such documents and services required for the construction bidding and construction of the Project, and submit same to the City as appropriate for comments.
- c. Advertise for bids and award one or more construction contract(s) for the Project. Administer contract(s) for the Project and make all payments to the contractor(s). Be responsible for contractor claims for additional compensation caused by the Project delays attributable to the State.
- d. Upon completion of the Project, perform the final inspection and notify the City in writing that the Project has been constructed in accordance with the project documents and the Project has been satisfactorily completed.

## 2. The City shall:

- a. Upon execution of this Agreement, designate the State as the City's agent.
- b. Review the design documents required for construction of the Project, and provide comments to the State as appropriate.
- c. All costs attributable to any engineering change orders requested by the City shall be the sole responsibility of the City for payment. Be responsible for contractor claims for additional compensation caused by Project delays attributable to the City.
- d. Upon completion of the Project by the State, the City will be responsible for obtaining the electrical power to operate all Project lighting, all at the City's expense.
- e. Be responsible for the on going maintenance and emergency repairs upon completion of said Project. Maintenance shall include but not be limited to: keeping the pathway surface and surrounding areas free of all debris, and doing any repairs that might be necessary to keep the pathway, any safety railing and/or retaining wall compliant with the Americans with Disabilities Act Accessibility Guidelines.
- f. Be responsible for the electrical power and water necessary to maintain the landscaping and irrigation system according to acceptable horticultural practices, including all testing, adjusting, repairing and operation of the irrigation system and shall furnish all power to operate the system.

**III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said Project, except any provisions for maintenance, electrical power and water shall be perpetual. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty days (30) written notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said Project, which includes electrical power.
2. This Agreement shall become effective upon filing with the Secretary of State.
3. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

4. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

5. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

6. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue, Mail Drop 616E  
Phoenix, Arizona 85007  
(602) 712-7525  
(602) 712-7424 Fax

City of Somerton  
Attn: Public Works Director  
110 North State Avenue  
Somerton, Arizona 85350  
(928) 627-4115  
(928) 627-3794 Fax

7. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

9. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

---

**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year first above written.

CITY OF SOMERTON


By   
MIGUEL VILLAPANDO  
Mayor

ATTEST:

By   
CLIFF O'NEILL  
City Manager

STATE OF ARIZONA

Department of Transportation

By   
DOUGLAS A. FORSTIE, P.E.  
Deputy State Engineer, Operations


G:\Somerton multi-use pathway on SR 95@Bingham  
Initial draft 6/8/07 ghc  
FINAL draft-AG approved 10/23/07 ghc

**ATTORNEY APPROVAL FORM FOR THE CITY OF SOMERTON**

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF SOMERTON, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 6 day of November, 2007.

  
\_\_\_\_\_  
City Attorney



OFFICE OF THE  
MAYOR  
CITY OF SOMERTON

# *Resolution*

## *NO. 2007 – 049*

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF SOMERTON, ARIZONA AUTHORIZING THE MAYOR TO EXECUTE AND THE CITY MANAGER TO ATTEST TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN STATE OF ARIZONA AND CITY OF SOMERTON FOR THE DESIGN, CONSTRUCTION, AND MAINTENANCE RESPONSIBILITIES OF A NEW MULTI-USE PATHWAY ON THE SOUTH SIDE OF SR 95 FROM BINGHAM AVENUE TO THE SOMERTON CANAL

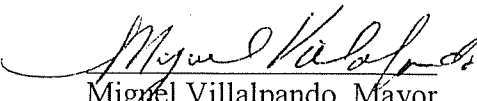
**WHEREAS,** The city is desirous of entering into an Intergovernmental Agreement between the State of Arizona Department of Transportation and City of Somerton to participate in the design, construction and maintenance of a new multi-use pathway on the south side of SR 95 from Bingham Avenue to the Somerton Canal.

**WHEREAS,** The Arizona Department of Transportation is requesting that the City execute the Intergovernmental Agreement in order to facilitate construction of a State transportation enhancement project on SR 95.

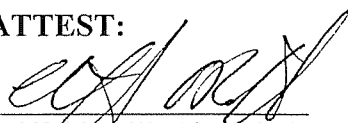
**BE IT RESOLVED,** by the Common Council of the City of Somerton, Arizona as follows:

THAT, the City's Mayor is authorized to execute, and City Manager is authorized to attest to, on behalf of the City of Somerton, Arizona, that certain document entitled "**INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA AND CITY OF SOMERTON**".


**PASSED AND ADOPTED** by the Common Council of the City of Somerton, Arizona this 9 day of November 2007.


  
Miguel Villalpando, Mayor

**ATTEST:**

  
Cliff O'Neill, City Clerk

**APPROVED AS TO FORM:**

  
Gerald W. Hunt, City Attorney

<p>TERRY GODDARD Attorney General</p>	<p> <b>OFFICE OF THE ATTORNEY GENERAL</b> STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
---	--	--


**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. P0012007003612 (**JPA 07-063-I**), an Agreement between public agencies, i.e., The State of Arizona and City of Somerton, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: November 19, 2007

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:mjf:10089  
Attachment